IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 223 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

COMMISSIONER OF INCOME TAX

Versus

KOSHALYA INVESTMENT P LTD IVL

Appearance:

1. INCOME TAX REFERENCE No. 223 of 1991
MR MANISH R BHATT for Petitioner No. 1
MR RK PATEL for Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE A.M.KAPADIA

Date of decision: 25/06/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

1. At the instance of the revenue, the following question of law, arising out of the order passed by the Income-tax Appellate Tribunal, Ahmedabad Bench-A, has been referred to this Court under the provisions of Section 256(1) of the Income-tax Act, 1961 (hereinafter referred to as the "Act").

"Whether, the Appellate Tribunal is right in law and on facts in cancelling the interest charged u/s.201(1A) of the I.T. Act?"

2. We have heard Senior Standing Counsel Shri Manish Bhatt appearing for the applicant-revenue and learned advocate Shri B.D.Karia appearing for the respondent-assessee.

3. The facts giving rise to the present Reference, in a nutshell, are as under;

3.1. For the assessment year 1982-83, the assessee had to make payment of interest to different parties to the tune of Rs.1,52,971.12 . The said amount of interest was in fact not paid till the last day of the previous year relevant to the said assessment year. The assessee had made a provision with regard to payment of the said amount of interest by debiting the said amount to an account named "interest payable account". According to the assessee, as the said amount of interest was neither paid to the concerned creditors nor the account of the concerned creditors was credited with the said amount, there was no question with regard to deducting the amount of tax at source from the said amount of interest. The assessee had deducted the amount of tax from the said amount of interest and had duly paid to the concerned government authority within the prescribed period when the said amount of interest was paid. As the amount of tax was not deducted and paid to the government authority, the Assessing Officer was of the view that the assessee had committed default by not depositing the amount of tax with the revenue authority and, therefore, he had charged penal interest under Section 201(1A) of the Act.

3.2. Being aggrieved by the order passed by the Assessing Officer, the assessee filed an appeal before the Commissioner of Income-tax (Appeals). After hearing the concerned parties, the Commissioner of Income-tax (Appeals) upheld the order passed by the Assessing Officer.

3.3. Being aggrieved by the order passed by the appellate authority, the assessee approached the Tribunal by filing an appeal. The Tribunal allowed the appeal for the reason that the amount of interest had neither been paid to the concerned parties nor their accounts had been credited by the amount of interest and, therefore, according to the Tribunal, the assessee could not have been saddled with the said amount of interest by the revenue.

4. In the aforestated circumstances, the above stated question of law has been referred to this Court.

5. The learned advocates appearing for the parties have fairly submitted that the question, which has been referred to this Court, has been answered by this Court in the case of ALKAPURI INVESTMENTS PVT. LTD Vs. D.S. KHOBA AND ORS., 226 ITR 506.

6. It has been held in the judgement referred to hereinabove that before 1st June, 1987, the date with effect from which the provisions of Section 194A(1) had been amended, it was not necessary to deduct the amount of tax from the amount of interest payable unless the amount of tax was actually paid or the amount of interest was credited in the account of the concerned creditor.

7. As Section 194A(1), at the relevant time, did not require the assessee to deduct tax from the interest payable, in our opinion, the Tribunal was justified in deleting the amount of penal interest, which was levied by the Assessing Officer as well as the Commissioner of Income-tax (Appeals). The aforestated position of law could not be disputed by Senior Standing Counsel Shri Manish Bhatt appearing for the revenue. Looking to the facts of the case and the law laid down by this Court in the case of ALKAPURI INVESTMENTS PVT LTD Vs. D.S. KHOBA & ORS, we answer the question referred to us in the affirmative i.e. in favour of the assessee and against the revenue.

The Reference thus stands disposed of with no order as to costs.

(A.R. DAVE,J.)

(A.M. KAPADIA,J.)

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